

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

A court authorized this notice. This is not a solicitation from a lawyer.

Do you have a child that:

- a) has Type 1 or Type 2 diabetes; and**
- b) is now or will in the future be enrolled in a New York City Department of Education (DOE) public school?**

TO: All students and parents of students with diabetes in need of diabetes-related care in school who are now or will be attending New York City Department of Education (DOE) schools. This does not apply to students who are attending charter schools, private schools, or pre-school programs.

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY LEGAL PROCEEDINGS IN THIS LITIGATION.

The proposed settlement (the “Settlement” or “Settlement Agreement”) resolves a lawsuit claiming that the Defendants (the DOE, the New York City Department of Health and Mental Hygiene, the Office of School Health, and the City of New York) discriminated against students with diabetes who attend DOE schools. The lawsuit specifically addresses the provision of accommodations and services for students with diabetes in DOE schools.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

- **You can object**—you may write to the Court if you do not agree with the Settlement.
- **You can go to the Fairness Hearing**—you may ask to speak to the Court regarding the fairness of the Settlement.
- **If you do nothing** and the Court approves this Settlement, if you are a Class Member, you will be bound by the terms of the Settlement.
- These rights and options are explained in this Notice. **There are deadlines to exercise these rights and options.**

GENERAL INFORMATION

1. What is this lawsuit about?

Three children with diabetes, by and through their parents (the Named Plaintiffs), along with the American Diabetes Association (together, the Plaintiffs), filed a lawsuit against the New York City Department of Education seeking better care for children with diabetes in school. This lawsuit is called *M.F., et al. v. New York City Department of Education, et al.*, Civil No. 18-CV-6109.

The Plaintiffs alleged that New York City Department of Education schools violate Federal laws protecting people with disabilities, specifically diabetes, because schools:

- Failed to schedule and hold meetings called Section 504 meetings, and draft and implement plans called Section 504 Plans, that describe the diabetes-related care and accommodations that students with diabetes need to safely attend school and benefit from their education, including transportation and school-sponsored extracurricular activities;
- Failed to adequately train school nurses, paraprofessionals, aides, teachers, substitutes, and other staff on diabetes care to meet the needs of students with diabetes, such as training in blood glucose monitoring, glucagon administration, or school nurses on insulin administration;
- Unnecessarily segregated students with diabetes by making them leave the classroom to receive routine diabetes-related care, causing them to miss valuable instruction time;
- Excluded students with diabetes from school and school-related activities like field trips, school-sponsored afterschool and extracurricular activities, and school breakfast by not providing necessary diabetes-related care.

More information about the lawsuit, including the Complaint, is available here:

<https://dralegal.org/case/m-f-v-new-york-city-department-of-education/>

More information about diabetes care in New York City public schools is available here:

<https://www.schools.nyc.gov/school-life/health-and-wellness/staying-healthy/diabetes>

2. What is a class action?

The Plaintiffs made their claims on behalf of themselves and other students who might also have been impacted by these practices. The Plaintiffs have been appointed by the Court to serve as Class Representatives on behalf of all the impacted students (also called the Class Members or the Class).

3. Why is there a Settlement?

Rather than proceed to trial, the Plaintiffs and the Defendants have agreed to settle the case. Plaintiffs believe that the Settlement they have reached is fair, adequate, reasonable, and in the best interests of the Class Members. In reaching this conclusion, the Class Representatives and their lawyers have considered the benefits of the Settlement, the possible outcomes of continued court proceedings, and the expense and length of continued court proceedings and possible appeals.

4. Who is covered by the Settlement?

All students with diabetes who currently attend a DOE school or will attend a DOE school in the future.

5. What do I do if I'm not sure whether I or my child is included?

If you are not sure if you or your child is in the Class and covered by the Settlement, please email Disability Rights Advocates at diabeteslawsuit@dralegal.org or call at (332) 217-2362 for more information.

6. Can a student receive money under the Settlement?

No. The Settlement does not give any monetary relief to Class Members.

WHAT THE SETTLEMENT PROVIDES FOR THE CLASS

If the Settlement is approved, the Defendants will be putting in place certain policies and practices. The Settlement will be in effect from September 1, 2023 to August 15, 2026 (this timeframe may be adjusted if the Court approves a Settlement after August 31, 2023). An external monitor and joint expert will be monitoring the Defendants' compliance with the Settlement's required actions during the term of the Settlement.

This notice summarizes the requirements in the Settlement:

- Improving planning for students with diabetes by ensuring Section 504 meetings are scheduled and held, and that Section 504 Plans are created and signed, and that Section 504 Plans include all accommodations decided by the Section 504 Team. Section 504 Plans describe the diabetes-related care and accommodations that students with diabetes need to safely attend school and benefit from their education and related activities.
 - For students with diabetes who are returning to the same school the next school year:

- For all student Class Members:
 - Section 504 Teams are required and will be reminded to use a Template Section 504 Plan developed in this lawsuit specifically for students with diabetes that lists the student's services and accommodations, as well as persons to be trained.
 - A student cannot be denied necessary accommodations due to lack of funding.
 - A Section 504 Plan shall be approved at the conclusion of the Section 504 meeting, when possible.
- Training of school nurses, paraprofessionals, aides, teachers, substitutes, bus drivers, bus attendants, and other school staff on diabetes care to meet the needs of students with diabetes:
 - All training materials will be updated as needed in consultation with the American Diabetes Association.
 - Nurses:
 - All new nurses will receive initial training on diabetes-related care, the rights of students with diabetes, Section 504 planning, and diabetes technology within six weeks of new staff nurses' first date of employment or during contract nurses' orientation. New nurses will not be placed at a school until their orientation is complete.
 - All nurses will receive student-specific training on the particular needs of the student they care for, such as diabetes technology. For example, a nurse treating a student who uses a Dexcom 6 Continuous Glucose Monitor (CGM) will receive training on that specific device.
 - Additional training will be provided if a student is diagnosed or enters school after the start of the school year, there is a new aspect of a student's diabetes treatment regimen, or additional training is clinically appropriate. Parents may request such additional training, and, if the Diabetes Team nurse or Supervising nurse agrees, the training must be provided to staff nurses within 5 school days of the need for training being identified, and to contract nurses no later than ten school days after the need has been identified.

- All nurses will receive annual refresher training on diabetes-related care prior to the start of the school year or as soon as possible thereafter.
- Paraprofessionals:
 - As soon as a Section 504 Team has determined that the assignment of a paraprofessional to provide diabetes-related care is appropriate, a paraprofessional will be identified promptly and in most cases within 5 school days.
 - All paraprofessionals will receive training on diabetes and the tasks they are expected to perform, as well as student-specific training for the individual student they are assisting.
 - A refresher training will be provided annually to all paraprofessionals who continue to be assigned to students with diabetes. Additional training may be provided as needed and parents may request additional training.
- Section 504 Coordinators:
 - All school staff serving as school Section 504 Coordinators at each school will receive training on Section 504 planning, including refresher training (for returning Section 504 Coordinators) to be completed by April 15 of each school year prior to Section 504 meetings being held in May and June.
- DOE teachers, coaches, and other adults with responsibility for a student with diabetes:
 - All such adults with responsibility for a student with diabetes shall receive Level 1 Training that includes a basic understanding of diabetes and how it may impact a student's ability to participate in school and school-related activities, how to recognize and respond to the signs and symptoms of hypoglycemia (low blood sugar) and hyperglycemia (high blood sugar), how to respond to hypoglycemia and hyperglycemia, whom to contact immediately in case of an emergency, and common accommodations considered for students with diabetes. This training will occur within 10 school days of having been identified as needing the training.

- The Named Plaintiffs and the Class release any claims for systemic injunctive relief related to the provision of accommodations and services for students with diabetes that arose before the date the Settlement is effective. That means that neither the Named Plaintiffs nor any Class Member can bring another lawsuit challenging the lack of accommodations and services for students with diabetes on a system-wide level based on events that occurred before this Settlement goes into place.
- Neither the Named Plaintiffs nor Class Members release any other individual diabetes-related claims such as due process claims arising under the Individuals with Disabilities Education Act or Section 504, or any monetary claims.

8. What does the Settlement provide for the Named Plaintiffs?

As part of the Settlement, the Defendants have agreed to pay the three Named Plaintiffs \$5,000 each for class representative services.

THE LAWYERS IN THE CASE

9. Do I have a lawyer in this case?

Yes. If you or your child is a Class Member, attorneys from Disability Rights Advocates, a non-profit law firm, represent you solely for purposes of this litigation. Disability Rights Advocates is experienced in handling similar cases regarding disability rights. More information about Disability Rights Advocates and its lawyers' experience is available at <http://www.dralegal.org>.

You will not be charged for being represented by these lawyers in this matter. If you want to get your own lawyer, you may hire one at your own expense.

10. How will the lawyers be paid?

The lawyers will be paid by the Defendants in this case. The Settlement Agreement states that the attorneys for the Class can seek reasonable attorneys' fees from the Defendants for investigating the facts of this case, litigating the case, negotiating the Settlement, and monitoring and enforcing the Settlement. The payment of attorneys' fees will not impact the services provided by the Defendants under this Settlement, or the policies and practices the Defendants have agreed to implement.

OBJECTING TO THE SETTLEMENT

11. How do I tell the Court that I do not like the Settlement?

The Settlement must be approved by the Court before it takes effect.

You may object to the Settlement if you do not like any part of it. The Court will consider your views. To object, you must send an email to the Court copying all Counsel (email addresses found below) stating, "I object to the settlement in M.F., et al v. New York City Department of Education, et al." You must include your name, email address, physical address, best telephone number, the specific reasons why you object to the Settlement, copies of any documents that you want the Court to consider, and a statement whether the objection applies only to yourself, a specific subset of the class, or the entire class. If you are objecting and you want to speak at the virtual hearing, you must say so in your written objection or otherwise send a separate notice of intention to speak (discussed in Question 14 below). If you do not have email available, you may send your objection, via First Class Mail, to the Judge's Courtroom Deputy with copies sent to all Counsel. Email and mailing addresses are as follows:

Victor Joe
Courtroom Deputy of Judge Gershon
Victor_Joe@nyed.uscourts.gov
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Torie Atkinson
Disability Rights Advocates
diabeteslawsuit@dralegal.org
655 Third Avenue, 14th Floor
New York, NY 10017

Chlarens Orsland
New York City Law Department – General Litigation Division
corsland@law.nyc.gov
100 Church Street, Room 2-174
New York, NY 10007

Your objection must either be emailed or mailed no later than FEBRUARY 27, 2023. Class Counsel, Disability Rights Advocates, will file any objections on the electronic docket and provide Class Members who object with a receipt of this filing by email or mail.

THE FAIRNESS HEARING

12. When will the Court make a decision about approving the Settlement?

The Court will hold a virtual Fairness Hearing on **APRIL 19, 2023, at 2:00 PM**. At this virtual hearing, the Court will consider whether the settlement is fair, adequate, and reasonable. If any written objections were emailed or mailed by the objection deadline, the Court will consider them. The Judge will listen to people who have properly submitted requests to speak at the hearing. After the hearing, the Judge will decide whether to approve the Settlement. We do not know how long these decisions will take. If the Court approves the Settlement after the Fairness Hearing, there could still be appeals. If any appeal is filed, it is uncertain how long it might take to resolve. If the Settlement is approved, and no appeal is filed, the Defendants will start taking the actions required by the Settlement.

13. Do I have to attend the hearing?

No. The lawyers from Disability Rights Advocates will attend the hearing and answer any questions the Judge may have about the case. But you are welcome to attend at your own expense. You can join the virtual hearing via Zoom at the following link:

<https://nyed.zoomgov.com/j/1600673093?pwd=VXBwTVFNZUg3bjZKUUFNV1EwTmlVZz09>

Meeting ID: 160 067 3093

Passcode: 090317

Or via telephone at the following number:

1 (646) 828-7666

Meeting ID: 160 067 3093

Passcode: 090317

Any changes to the hearing date or time will be available on the Disability Rights Advocates website at <https://dralegal.org/press/nyc-school-diabetes-settlement-fairness-hearing/>. If you submit a written objection, you do not have to attend the hearing to talk about it. As long as you emailed or mailed your written objection on time, the Court will consider it. You may also retain your own lawyer to attend, but it is not necessary. If you wish to speak at the Fairness Hearing you must say so either in your objection itself or in a separate notice of intention to speak.

14. Am I allowed to speak at the hearing?

You can ask the Court for permission to speak at the virtual Fairness Hearing. Please note that any costs incurred for attending the hearing will be at your own expense. To request to speak at the hearing, if you have not indicated your intention to speak in an objection to the settlement, you must send an email to the Court copying all Counsel saying that it is your intention to appear in *M.F. v. New York City Department of Education*, Civil No. 18-CV-6109 (NG). Make sure to include your name, email address, physical address, telephone number, the reasons that you intend to speak at the hearing, and list any witnesses you may call to testify and exhibits you intend to introduce into evidence at the hearing. If you do not have email available, you may send your notice of intention to speak via First Class Mail to the Judge's Courtroom Deputy with copies sent to all Counsel. Use the email or mailing addresses indicated above in Question 11. **Your notice of intention to speak must either be emailed or mailed no later than FEBRUARY 27, 2023.** Class Counsel will file any notices of intention to speak on the electronic docket and provide Class Members who intend to speak a receipt of this filing by email or mail.

15. What if I do not do anything?

You do not need to do anything to receive the future protections of this Settlement once it is approved.

GETTING MORE INFORMATION

16. Are there more details about the Settlement?

This notice summarizes the Settlement. There are more details in the Settlement Agreement itself. To the extent that this notice varies from the Agreement, the terms of the Agreement are correct.

You can access a copy of the Agreement by visiting the Disability Rights Advocates website at:

<https://dralegal.org/case/m-f-v-new-york-city-department-of-education/> You can also request a copy of the Agreement, ask questions about the Agreement, or request any other documents in this case, including the motion for Preliminary Approval and the Court's prior decisions, by calling (332) 217-2362 or emailing diabeteslawsuit@dralegal.org.

Finally, you can access the Court docket in this case by visiting the office of the Clerk of the Court for the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

Please do not call the Court or the Court Clerk's office to ask about this Settlement.

If you or your child is a student with diabetes and you are experiencing issues related to your child's care in school, you may reach out directly to DOE:

Section 504 Program Manager for New York City Department of Education,
Office of School Health
(212) 287-0354
504Questions@schools.nyc.gov

OR

The Health Director for your child's school:

Please visit <https://www.schools.nyc.gov/school-life/health-and-wellness/staying-healthy/diabetes> for up-to-date Health Director contact information.

ACCESS/District 79 (Transfer Schools, District 79 & Consortium/Internationals/ NYC Outward Bound Schools)

Health Director: Norberto Perez
Email: NPerez4@schools.nyc.gov
Phone Number: 646-413-5069
Address: 4360 Broadway, New York, NY 10033

Brooklyn North (Districts 13, 14, 15, 16, 19, 23, 32)

Health Director: Norberto Perez (I.A.)
Email: NPerez4@schools.nyc.gov; BkNorthHealth@schools.nyc.gov
Phone Number: 646-413-5069
Address: 4360 Broadway, New York, NY 10033

Brooklyn South (Districts 17, 18, 20, 21, 22)

Health Director: Juliana Felix-Barret
Email: JFelixBarret@schools.nyc.gov
Phone Number: 718-759-4921
Address: 415 89th Street, Rm 509, Brooklyn, NY 11209

Bronx (Districts 7, 8, 9, 10, 11, 12)

Health Director: Marleni Moreira
Email: MMoreira3@schools.nyc.gov
Phone Number: 718-828-4785
Address: 1230 Zerega Avenue, Bronx, NY 10462

Manhattan (Districts 1, 2, 4, 6)

Health Director: Magdalene Gomes
Email: MGomes6@schools.nyc.gov
Phone Number: 212-356-3867
Address: 333 7th Avenue, Rm 827 New York, NY 10001

Manhattan (Districts 3, 5)

Health Director: Stephanie Caloir
Email: SCaloir@schools.nyc.gov
Phone Number: 718-556-8383; 646-369-2502
Address: 715 Ocean Terrace, Rm A-309 Staten Island, NY 10301

Queens North (Districts 24, 25, 26, 30)

Health Director: Carin Jean Pierre-Destin
Email: CPierre@schools.nyc.gov
Phone Number: 718-281-3410
Address: Queens North 30-48 Linden Place, Flushing, NY 11354

Queens South (Districts 27, 28, 29)

Health Director: Edith Richards
Email: ERichards7@schools.nyc.gov
Phone Number: 718-348-2956
Address: 82-01 Rockaway Blvd, Rm 420, Queens, NY 11416

Staten Island (District 31)

Health Director: Stephanie Caloir
Email: SCaloir@schools.nyc.gov
Phone Number: 718-556-8383; 646-369-2502
Address: 715 Ocean Terrace, Rm A-309 Staten Island, NY 10301

District 75

Health Director: Shona Gibson
Adam Breier
Email: SGibson4@schools.nyc.gov
ABreier@schools.nyc.gov
Phone Number: 212-802-1552
718-923-5087
Address: 400 First Avenue, Rm 715 New York, NY 10010

If you have questions about this Settlement, you may contact Class counsel Disability Rights Advocates:

DISABILITY RIGHTS ADVOCATES
diabeteslawsuit@dralegal.org
655 Third Avenue, 14th Floor
New York, NY 10017
Tel: (332) 217-2362
<http://www.dralegal.org>

If you have questions about diabetes in schools, you can contact:

AMERICAN DIABETES ASSOCIATION

1-800-DIABETES (342-2383)

askada@diabetes.org

<http://www.diabetes.org/safeatschool>